

December 2009*
updated February 2010

K&L | GATES

**Outline of Requirements for the
Organization and Management
of Political Committees Under
Federal and Pennsylvania Law**

Raymond P. Pepe
Partner
Harrisburg
717.231.5988
raymond.pepe@klgates.com

K&L Gates LLP

Introduction

Listed below is a practical nuts-and-bolts outline of requirements necessary to establish and manage political committees under Federal and Pennsylvania law organized for the purpose of raising funds and making contributions to directly support the election of candidates. This outline does not address the issues relating to the U.S. Supreme Court's January 21, 2009 decision in *Citizens United v. Federal Election Commission*, 558 U.S. ___ (2010) which held that the provisions of the Bipartisan Campaign Finance Act of 2002 which prohibit the use of corporate and union treasury funds to expressly advocate the election or defeat of a candidate facially violate the First Amendment. A separate *Public Policy and Law Alert*, "[Corporate Finance Overhaul: Corporations May Now Make Direct Political Expenditures](#)," by Tim L. Peckinpugh and Stephen R. Roberts, provides an overview of the *Citizens United* decision. The Federal Election Commission is considering the impact of the opinion on its existing regulations, as well as its ongoing enforcement processes, and has promised to provide guidance "as soon as possible" regarding what steps will be taken to comply fully with the opinion. When additional guidance is provided by the FEC or from the Pennsylvania Election Bureau, K&L Gates LLP will issue further *Public Policy and Law Alerts* regarding measures necessary for the use of corporate and union treasury funds to support the election or defeat of candidates.

I. Federal Election Commission Requirements

A. Establishing a PAC

1. Registration. A registration form (FEC Form 1) must be filed within 10 days of the date of establishment of a PAC (technically a "separately segregated fund"). A PAC is deemed to be established on the date of a vote by a board of directors or other comparable governing body to create the PAC, the selection of officers to administer the PAC, or the payment of any operating expenses for the PAC. PACs which raise or spend more than \$50,000 in a calendar year must file electronically.¹

2. Changes to Registration Information. Whenever any of the information disclosed on the FEC Form 1 changes, notice of the changes must be provided to the FEC within 10 days. For electronically registered PACs, notice must be provided by filing an amended FEC Form 1. Otherwise notice may be provided by letter.

3. Appointment of Treasurer. A treasurer must be appointed for the PAC within 10 days of its establishment and identified on the FEC Form 1. A PAC may not raise or expend any funds until a treasurer is appointed, or if there is a vacancy in the office of treasurer. The FEC recommends that an assistant treasurer be appointed who may assume the treasurer's duties if the treasurer is not available. The treasurer (or assistant) is responsible for filing complete, accurate and timely reports; signing reports; depositing the receipts of the committee; authorizing expenditures; conducting monitoring to ensure compliance with federal law and regulations; and keeping required records.

4. Designation of Record Custodian. A record custodian must be designated and identified on the FEC Form 1 who will be in possession of the PAC's books and records. The custodian may be the treasurer or assistant treasurer, but may be another person. PACs must keep reports and accounts of their financial activities for at least three years. The appointment of a record custodian does not relieve a treasurer or assistant treasurer of the obligation for ensuring that records are properly maintained.

5. Indemnities and Insurance. Because the treasurer and assistant treasurer may be personally responsible for compliance with federal law and regulations, an organization establishing a PAC should consider whether appropriate measures are in effect providing for the defense and (where appropriate) the indemnification of the treasurer or assistant treasurer for alleged violations of federal law and regulations and whether any modifications to the terms of any applicable insurance policies are necessary.

6. Incorporation. It is not necessary to incorporate a PAC, but it is permissible to do so. An organization establishing a PAC should consider whether from the perspective of limiting its liability, incorporation is desirable.

7. By-Laws. It is not necessary for a PAC to establish by-laws to govern its management, but a PAC may do so. By-laws may be useful, however, to the extent a PAC includes a substantial number of contributors who may have conflicting political objectives. By-laws may provide for the designation of officers or an executive committee to manage the affairs of the PAC.

8. Designation of a Connected Organization. The name of any corporate business entity that is sponsoring, organizing, or paying expenses associated with the PAC must be identified on the FEC Form 1. A connected organization is one that uses its treasury funds to establish, administer or solicit contributions for a PAC.

9. Assignment of a Name. A PAC must be assigned a name that includes the full name of its connected organization and must identify its name on its FEC Form 1. If a connected organization has a parent company or subsidiaries, the names of the parent and sponsoring organization need not be included in the name of the PAC. The PAC may also designate and identify on its FEC Form 1 an abbreviated name that may be used on checks and letterhead. Any abbreviated name must include a clearly recognizable acronym or form of the sponsoring organization's name.

10. Receipt of Financial Support from a Connected Organization. A connected organization and its affiliates may use corporate funds to pay for office space, phones, salaries, utilities, supplies and fundraising activities for the PAC and may control the activities of the PAC.² A PAC may also use its own funds for administrative expenses and obtain reimbursement from its connected organization. Any reimbursement must be paid, however, within 30 days of the disbursements by the PAC for which reimbursement is requested. A PAC may be created without a connected organization, or based on the sponsorship of a partnership or unincorporated association, but such a PAC (*i.e.*, a "nonconnected PAC") must use monetary or in-kind donations to pay its administrative expenses or support its operations, and any donations from an unincorporated sponsor may not exceed \$5,000 per calendar year.

11. Establishment of a Separate Administrative Account for Financial Support from a Connected Organization. A PAC receiving payments from a connected organization to support its administration must establish a separate administrative account used only to pay for the establishment, solicitation and administrative costs of a PAC. A connected organization may also make direct payments to vendors to support the activities of a PAC, but may not commingle its funds with those of a PAC.

12. Identification of Affiliated PACs. The FEC Form 1 must identify any other PACs, known as "affiliated committees," established by the connected organization, its parent, or if the parent is the connected organization, by its subsidiaries. Affiliated committees must also be identified which are organized by other entities with which the connected organization has controlling interests or authority, overlapping membership or management, or with which

the PAC or connected organization coordinates its activities. For the purpose of determining compliance with contribution limits, contributions among all affiliated PACs must be treated as having been made from a single entity. In addition, for purposes of determining the class of persons who may be subject to solicitation by a PAC, each affiliated PAC may solicit funds from the "restricted class" of other affiliates.

13. Designation of a Depository. A PAC must designate a bank where the committee will deposit its funds and identify the depository on its FEC Form 1. Affiliated PACs may not share the same bank account.

14. Notification of Multicandidate Status. When a PAC receives contributions from 51 or more donors, has been registered at least six months, and has made contributions to at least five federal candidates, a Notification of Multicandidate Status must be provided to the FEC on FEC Form 1M and any recipients of contributions must be advised that the PAC has qualified as a multicandidate committee. Different contribution limits apply to multicandidate committees than to non-multicandidate committees.³

B. Restrictions and Limitations Imposed on Donations and Contributions

1. Donation Limits. Donations to a PAC may not exceed \$5,000 per calendar year from any one individual (either in the form of direct contributions, contributions made through partnerships, or in the form of earmarked contributions made through other PACs). A separate \$5,000 limit applies to contributions from spouses. If a joint check is used to make a contribution, the contribution is divided equally between each party to the joint account unless accompanied by a statement providing for a different allocation.⁴ In making contributions to the PAC, individuals are further subject to a biennial limit of \$115,500, consisting of not more than \$45,600 of contributions to all candidates, and not more than \$69,900 to all PACs and political parties. These limits are subject to adjustment for inflation in odd-numbered years.

2. Partnership Contributions. Contributions to a PAC, federal candidates and campaign committees may be made by entities treated as partnerships for federal tax purposes. Each partnership is limited to making annual donations to a PAC not to exceed \$5,000. Contributions from partnerships also count proportionally against each contributing partner's \$5,000 per year limit for contributions to each PAC, candidate or candidate committee. Generally, if all partners in a partnership are joining in a particular contribution, the contribution must be attributed to each partner based on the partner's share of profits. If partnership contributions are attributed only to certain partners, or a partnership elects to attribute contributions to partners on a basis other than partnership profits, the contributing partner's profits must be reduced (or losses increased) by the amount of the contributions attributed to them and the profits of other partners may not be affected. Partnership contributions may not be made from the share of profits earned by any corporate partner or a partner who is a foreign national. In addition, partnerships that have entered into, or are negotiating, contracts with the federal government may not make contributions.

3. Determining the Amount of Donations to PACs. The total amount paid to attend a fundraiser or purchase an item from a PAC is treated as a contribution regardless of whether a portion of the amount paid is used to defray the expenses of the PAC. Outstanding loans or loan guarantees to a PAC are considered contributions.

4. Donation Restrictions. Contributions exceeding \$100 in the aggregate must be made by check. Anonymous contributions in excess of \$50 are prohibited. A PAC may also not accept donations from corporations, banks, federal government contractors, individuals who are not citizens of the U.S. or permanent residents, entities organized under the laws of foreign countries or having a principal place of business in a foreign country, foreign governments, foreign partnerships, foreign political parties, or foreign associations or corporations. In addition, contributions may not be made by one person in the name of another person.

5. Contribution Limits. A multicandidate PAC may contribute up to \$5,000 to each candidate or candidate committee per election; up to \$15,000 per calendar year to national party committees; and up to \$5,000 per calendar year to state, district and local party committees. Subject to inflation adjustments in odd-numbered years, a non-multicandidate PAC may contribute up to \$2,400 to each candidate or candidate committee per election; up to \$30,400 per calendar year to national party committees; and up to \$10,000 per calendar year to state, district and local party committees. Both multicandidate and non-multicandidate PACs may contribute up to \$5,000 per calendar year to other PACs.

6. Designation of Contributions. To ensure compliance with limits on donations to candidates and candidate committees, when making contributions the FEC recommends that PACs designate whether the contributions are intended to support a general or primary election. Undesignated contributions are attributed to the next scheduled election. Designated contributions may be made for future elections or to retire debts from a prior election to the extent such debts exist. A candidate or candidate committee may request a PAC to re-designate the election for which a contribution is given to avoid exceeding contribution limits, but a re-designation to be effective must be received within 60 days of receipt of the original contribution. In addition, a candidate or candidate committee may unilaterally re-designate contributions received from non-multicandidate committees prior to primary elections for use in general elections.

7. Monitoring Contributions by Affiliated PACs. Where affiliated PACs exist, the affiliated PACs must set up a centralized recordkeeping system to ensure that contributions made and received by all affiliates comply with donation and contribution limits.

8. Earmarked Contributions. To the extent a PAC is directed by a contributor orally or in writing to use a contribution for the benefit of a clearly identified candidate or committee, the PAC is considered a "conduit" or "intermediary."⁵ While a PAC may act as a conduit, corporations and individuals acting on behalf of corporations are prohibited from acting as conduits. Other individuals may act as conduits, but must disclose their activities in writing to the FEC in a letter within 30 days. Contributions made through a conduit must be credited against the donation limits for the donor.⁶ If a PAC acting as a conduit exercises any direction or control over the donor's choice of a recipient candidate, the full amount of the contribution also counts against the PAC's donation limits. In addition, if a PAC requests that a donor earmark funds for a specific candidate, the cost of the solicitation incurred by the PAC constitutes an in-kind contribution to the candidate and further applies against the PAC's donation limits. All earmarked contributions received by a PAC must be forwarded either in the form of the original check received or as a contribution from the PAC within 10 days of receipt together with a transmittal report containing the information the candidate or the candidate's committee will need for its own records. If payroll deductions are earmarked, the PAC must receive a signed and dated statement from each contributor designating the contribution to a particular candidate or committee.

C. Solicitation and Collection of Contributions

1. Solicitations Directed to the “Restricted Class” of a PAC. A PAC may direct fundraising solicitations at any time only to a restricted class of personnel consisting of the executive and administrative personnel of a connected organization or its affiliates, stockholders, and their family members. Under limited circumstances which require a case-by-case evaluation, solicitations may also be directed to consultants and commissioned employees, compensated board members, or executive or administrative personnel of controlling corporations or partnerships. Except for permissible twice-annual solicitations directed to all employees (discussed in Paragraph 3 on the next page), solicitations by a PAC may not be directed to professional employees represented by a labor union; lawyers, consultants and other personnel retained by a corporation who are not employees; uncompensated board members; salaried foreman and supervisors of hourly employees; and former or retired personnel.

2. Payroll and Annuity Deductions. Donations to a PAC from members of its restricted class may be collected by a connected organization through voluntary payroll or annuity deductions provided a written authorization is obtained before making any deductions. When collecting donations, a connected organization may not use a reverse check-off plan.

3. Twice-Yearly Solicitations. Twice a year a corporation or its connected PAC may solicit contributions from all employees of the connected organizations and its affiliates and members of their families who do not qualify as executive and administrative personnel. Solicitations may not be directed to other PACs. Employees whose wages are not subject to income tax withholding may not be solicited. Payroll deductions may not be used to collect donations raised through the twice-yearly solicitations.

4. Employee Participation Plans. In addition to permissible twice-yearly solicitations, a corporation may establish a trustee-administered employee participation plan supported by separate donations or payroll deductions. An employee participation plan must be made available to all corporate employees and must afford the employees complete control over the disbursement of funds. The administrator of the plan may not provide information to the corporate sponsor regarding individual donations made by employees, but may only provide information to the corporation as necessary to establish any authorized payroll deductions and regarding the total number of participants in a plan and the combined total contributions made to all candidates and committees. Donations made from an employee participation plan to a PAC, candidate, or candidate committee may not identify the corporate sponsor of the plan. Participation in any trustee-administered plan must be strictly voluntary and no stockholder, director, or employee of the corporation may exert pressure of any kind on employees to participate.

5. Solicitation Disclosures. Any solicitation of donations conducted by or on behalf of a PAC must disclose that contributions are being solicited to promote the political purposes of the PAC and are voluntary. Potential donors must be advised that a decision to make a donation or refuse to do so will not confer any benefit or disadvantage on the person solicited. Contributions may not be secured by job discrimination, financial reprisal, or threats of force, and any dues or fees collected as a condition of membership or employment in a connected organization may not be used as donations, even if the amounts are refundable. If a PAC has annual gross receipts that normally exceed \$100,000, the solicitations must include a notice that contributions are not tax deductible.

6. Collecting Contributions for a PAC. A connected organization, a parent or subsidiary of a connected organization, or an affiliated PAC may solicit and collect contributions for a PAC from its restricted class provided that (1) all restrictions and disclosures required for solicitations are followed; (2) the collecting agent either transmits any checks received directly to the PAC, establishes a restricted transmittal account for the temporary deposit of funds, or keeps separate records of all receipts and deposits; and (3) the collecting agent collects and forwards information regarding individual donors to the PAC to the same extent to which the PAC would be required to collect information for directly connected donations.⁷ Separate deposits must be made for each cash contribution received. Contributions of \$50 or less must be forwarded to the PAC within 30 days and larger contributions must be forwarded to the PAC within 10 days.

7. Appointment of Custodian for Twice-Yearly Solicitations. Before conducting a twice-yearly solicitation, a connected organization must appoint a custodian to collect donations, transfer the donations to the PAC, and provide recordkeeping information regarding contributions exceeding \$50 and the total number and amount of contributions received of \$50 or less. The custodian must preserve the anonymity of individuals who do not wish to donate or who donate \$50 or less. The custodian may not be a stockholder, officer or employee of the connected organization or a union of the connected organization, except that the custodian may be the treasurer of the PAC if the treasurer preserves the anonymity of contributors as required and does not participate in decisions regarding contributions or expenditures made by the PAC. In order to comply with recordkeeping requirements for aggregate contributions of \$50 or more, the custodian must keep records of all contributions received.

8. Method of Making Twice-Yearly Solicitations. Twice-yearly solicitations must be made in writing and mailed to the home of the solicitee. The solicitations must contain the disclosures required to be given in solicitations directed to a connected organization’s restricted class (Paragraph 1 above) and must also notify recipients of the custodial arrangement for the collection of contributions and note that the custodian will preserve the confidentiality of those who do not contribute or make contributions of \$50 or less, including multiple contributions of \$200 or less.

9. Notification to Labor Unions. A corporation must notify any labor union representing any of its employees of its intent to conduct a twice-yearly solicitation and make available to the labor union the method it uses for soliciting and collecting donations and allow the labor union to conduct a campaign to solicit donations to the union’s PAC from the executive and administrative personnel of the corporation; employees of the corporation, its subsidiaries and affiliates, including workers not represented by the labor union; the corporation’s stockholders; all employees of the labor union; and family members of any person from whom donations may be solicited.

10. Other Solicitations and Unsolicited Donations. Except for solicitations of its restricted class and permissible twice-yearly solicitations, a PAC may not solicit funds from other individuals or PACs. While unsolicited donations may be accepted from other individuals or PACs, a PAC may not advise such donors that contributions may be accepted.

11. Use of Corporate Funds for Promotional Items. If corporate funds are used for promotional items, entertainment or raffles in connection with fundraising by a PAC, the aggregate cost may not be “disproportionate” in comparison with the amount of funds raised, and the PAC must reimburse the connected organization for costs that exceed one-third of the amount raised. For example, if goods are donated worth \$300 for a raffle that generates \$600, \$100 must be reimbursed by the PAC.

12. Use of Credit Cards. Individuals may make donations to a PAC using credit cards.

13. Matching Charitable Donations. A connected organization may encourage contributions to a PAC by pledging to match all or a portion of a contributor’s gift to a charity.

14. Handling Illegal Contributions. If a PAC receives contributions that are or appear to be excessive or prohibited, within 10 days the contribution must either be returned, or deposited subject to restrictions that will reserve sufficient funds to make refunds if the contributions are ultimately determined to be impermissible. If a check appears to exceed a contributor’s annual limit, the PAC must seek a reattribution of the donation or return it. If a check appears to come from a prohibited source, the PAC must confirm its legality, and return it if it is determined to be illegal or its legality cannot be established within 30 days. Where excessive contributions are received via a written instrument with more than one person’s name on the account, the PAC may attribute the permissible portion to the signer and assign the remaining portion to the other party or parties, provided the reattribution does not exceed any permissible contribution limit, and advise the donor that he or she may either request a refund or provide written consent to the reattribution. If consent to the reattribution is not obtained within 60 days, the excessive contribution must be refunded. Written records must be maintained noting the basis of concern for each potentially illegal contribution deposited by a PAC and explaining how the concern was resolved.

D. Administrative Requirements

1. Tax Payments. Investment income earned by a PAC may be subject to federal and state income tax which must be paid using PAC funds and may not be paid for a PAC by its connected organization.

2. Independent Expenditures. In addition to making contributions to candidates, candidate committees and other PACs, a PAC may make expenditures for independent communications expressly advocating the election or defeat of a candidate if the communication is not made in consultation or cooperation with, or at the suggestion of a candidate, candidate’s committee, party committee or their agents. Independent expenditures are not subject to contribution limits. Corporate funds and the funds of connected organizations may not be used for independent expenditures. Expenditures for communications that do not qualify as independent expenditures must be treated as contributions to a candidate or candidate’s committee. Any communication that solicits the public for contributions on behalf of a candidate or distributes or republishes campaign material produced or prepared by the candidate’s campaign, or coordinated with the candidate’s campaign, constitutes an in-kind contribution.

3. Notices. Any public communication made by a PAC, even those which do not contain direct advocacy, must “clearly and conspicuously” disclose the full name and abbreviated name of the PAC and state whether the communication was authorized or not authorized by one or more candidates.

In-house publications circulated to persons outside the restricted class of permissible donors may not be used to solicit contributions unless they contain a caveat stating that contributions will be screened and those received from persons outside the restricted class returned and the number and percentage of unsolicitable persons receiving the publication are “incidental.” Any solicitation materials should also include a notice that federal law requires the PAC to use its best efforts to obtain the name, mailing address, occupation, and name of the employer of each contributor donating \$200 or more in any calendar year.

4. Record Retention. A PAC must maintain copies of each statement, disclosure report and notice filed with the FEC and “backup records relevant to the report” for three years from the date of filing. For contributions of \$50 or more, a PAC must also maintain for three years full-size photocopies or digital images of each check or instrument used to make the contributions.

5. Records of Receipts. For contributions received, a PAC must maintain records of the amount received, the date of receipt, and the name and address of the source. If individual contributions are received in amounts of less than \$50 (such as gate receipts at a fundraiser or small cash contributions), it is only necessary to identify the event, the date of receipt, and the total amount of such contributions received on a daily basis. For individual contributions which exceed \$200, records must be maintained identifying the donor’s occupation and employer. The date of receipt of contributions may be earlier than the date of receipt by the PAC if a collecting agent is used.⁸ For contributions made by credit card, the date of receipt is the date of receipt of a signed authorization to charge the account. The FEC recommends, but does not require, that records of other receipts be maintained as backup to reports filed with the FEC, including receipts of transfers from affiliated PACs, bank loans, interest and dividends, and loan repayments.

6. Deposit of Contributions. Contributions must be deposited within 10 days of receipt. Contributions not deposited within 10 days must be returned to donors.

7. Records of Disbursements. For all disbursements, a PAC must maintain records of the date, amount, name and address of the payee, and the purpose of the disbursement. If disbursements exceed \$200, a receipt, invoice or cancelled check must be kept. For contributions to candidates or candidate committees, records must also record the office sought by the candidate and the election for which the disbursement was made. The PAC must maintain either a full size photocopy or digital image of each check of \$50 or more used to make political contributions. When disbursements are made using a credit card, the PAC must retain either monthly billing statements or receipts for each transaction. Records must also be kept for all transfers of funds to affiliated PACs.

8. Documentation of “Best Efforts.” Because circumstances may occur in which PACs are unable to obtain all required information regarding donations and disbursements, PACs must maintain records of “best efforts” to obtain the required information. This documentation must include evidence that any solicitation documents included a notice regarding the information that must be provided by donors and evidence that if donations of \$200 or more are received without the required information, a request is made for the information and at least one follow-up request is made within 30 days. If receipts, invoices, or cancelled checks are not available for disbursements of \$200 or more, records must also include a request for such information.

9. Election to Make Reports to the FEC on a Quarterly or Monthly Basis.

PACs may elect to file reports with the FEC either on a quarterly or monthly basis. During election years, PACs filing on a quarterly basis must file three quarterly reports, a report prior to any primary or special election, and reports before and after the general election. In non-election years, PACs filing on a monthly basis are only required to file semi-annual reports. During election years, PACs filing on a monthly basis must file nine monthly reports, a year-end report and reports before and after the general election. In non-election years, PACs filing monthly reports must file 11 monthly reports and a year-end report. Monthly filing is advantageous if a PAC makes contributions in multiple states having different primary dates. The designation regarding quarterly or monthly reporting is made by noting the type of reports being filed on the reports themselves, except that if a PAC filing on a monthly basis wishes to file on a semi-annual basis in non-election years, prior notification must be given to the FEC.

10. Due Dates for Quarterly Reports. PACs electing to file reports on a quarterly basis must file reports using the following schedule:

- A pre-primary report is due 12 days before the primary election, but only if the PAC has made any previously undisclosed contributions during the period up to 20 days before the date of the primary election.
- During election years, quarterly reports are due on April 15th, July 15th and October 15th.
- A pre-general election report is due 12 days before the general election covering activity from October 1st through the 20th day before the election, but only if the PAC has made any contributions during the period.
- A post-general election report is due 30 days after the general election regardless of whether any contributions were made by the PAC that covers the period between the last report filed by the PAC and the 20th day after the general election.
- In a non-election year, a mid-year report is due July 31st covering the period of January through June.
- In all years an end-of-year report is due on January 31st.

11. Due Dates for Monthly Reports. PACs electing to file reports on a monthly basis must file reports using the following schedule:

- During election years, reports are due on the 20th of each month from February to October covering the prior month.
- A pre-general election report is due 12 days before the general election covering activity from October 1st through the 20th day before the election, but only if the PAC has made any contributions during the period.
- A post-general election report is due 30 days after the general election regardless of whether any contributions were made by the PAC that covers the period between the last report filed by the PAC and the 20th day after the general election.
- During non-election years, reports are due on the 20th of each month from February to December covering the prior month.
- In all years an end-of-year report is due on January 31st.

12. Additional Reports for Independent Expenditures. Up until 20 days prior to any election, PACs which make independent expenditures must file additional reports within 48 hours each time independent expenditures aggregate \$10,000 or more. Within the last 20 days prior to any election, PACs which make independent expenditures must file reports within 24 hours whenever independent expenditures aggregate \$1,000 or more.

13. When Reports Must Be Received. The FEC imposes administrative penalties if reports are not filed on a timely basis. Generally reports must actually be received by the FEC on or before the due date, even if the due date falls on a weekend or holiday. If reports are sent by registered or certified mail, or by priority or express mail service having delivery confirmation, reports are deemed received on the postmarked date or the date recorded in the delivery service's tracking system. If reports are filed electronically by Internet connection, they must be validated by the FEC's computer system as received on or before 11:59 p.m. on the filing date. Incomplete or inaccurate Internet reports that do not receive validation are not considered to have been filed. PACs required to file electronically may also submit reports on 3.5" diskettes which must be received in the same manner as paper reports. Electronic filers may not file paper reports.

14. "Salting" Reports to Detect Misuse. Federal law makes PAC reports available for public inspection, but prohibits the sale or use of the names of individual contributors for commercial purposes or to solicit funds. For the purpose of detecting the misuse of lists of contributors filed with the FEC, up to ten fictitious names may be included in reports, provided a list of fictitious names is sent under separate cover to the FEC's Reports Analysis Division. No restrictions are imposed on the use of lists of PACs who make contributions to other PACs.

15. Reporting Forms. Required reports must be filed with the FEC using original paper copies of FEC Form 3X or electronic versions of the form either obtained from the FEC website or from commercial software vendors. If computer generated forms provided by commercial vendors are used, samples of the reports must first be submitted to the FEC for approval prior to their use, even if the commercial software provider has been designated by the FEC for use in filing reports.

E. Use of a Federal PAC to Support Federal and Non-Federal Elections

1. Option to Establish Combined or Separate Accounts. A federally registered PAC engaging in both federal and non-federal election activity may either set up one federal account that supports both federal and non-federal elections or set up separate accounts for federal and non-federal elections. If a combined account is utilized, all funds received by the PAC are subject to the prohibitions, limits, solicitation restrictions and reporting requirements pertaining to contributions arising under federal law and regulations and the PAC must report non-federal election disbursements as "other disbursements" on Schedule B of its FEC Form 3X reports. If separate accounts are used, only the federal account is subject to the FEC's registration and reporting requirements, and the non-federal account is not subject to federal contribution limits or solicitation rules.

2. Contribution Restrictions. Regardless of how a PAC is organized, a non-federal account may not accept contributions from national banks, federally chartered corporations, or foreign nationals.

3. Expense Allocation. Where a PAC maintains a separate federal and non-federal account, unless all of the expenses of the PAC are paid for by the federal account, or all of the expenses are paid for by the PAC's connected organization, various types of expenses must be allocated between the federal and non-federal account. Expenses that must be allocated consist of administrative expenses (such as rent, salaries and supplies), fundraising costs (if funds are raised for both the federal and non-federal account), generic voter drives (that urge support of all candidates of a particular party or supporting particular issues without reference to specific candidates), generic public communications (that refer to a political party or issue without reference to clearly identified federal or non-federal candidates), and direct candidate support activities that relate to the election or defeat of both federal and non-federal candidates. Expenses for communications and voter drives that refer only to federal candidates must be allocated entirely to the federal account, even if the communications include generic references to a political party, and expenses for communications and voter drives that refer only to non-federal candidates must be allocated entirely to the non-federal account, even if the communications include generic references to a political party. Expenses allocated to the federal account must be reported on the PACs FEC Form 3X report.

4. Prohibition on Funds Transfers. Where a PAC maintains a separate federal and non-federal account, subject to the following exceptions, funds may not be transferred between the two accounts. The non-federal account may act as a collection agent for the federal account and may transfer amounts collected for the federal account to the federal account, and the non-federal account may transfer funds to the federal account to cover the non-federal portion of expenses benefiting both accounts. In the event an excessive amount of funds is transferred from a non-federal account to a federal account to pay non-federal expenses based upon an estimated allocation of expenses, a further transfer from the federal to the non-federal account is authorized to avoid an excessive transfer.

5. Methods for Paying Expenses. A PAC with federal and non-federal accounts and allocating expenses between the two accounts must use one of two permissible methods to pay its expenses. The PAC must either (1) transfer funds from the non-federal account to the federal account for the non-federal account's expenses, and have the federal account pay the expenses; or (2) the PAC must establish a separate allocation account for the sole purpose of paying joint expenses into which both accounts may make payments. If an allocation account is established, the allocation account constitutes a federal account and the PAC must include the account's receipts and disbursements in its FEC Form 3X reports. In either event, all expense payments must be reported to the FEC and the non-federal account may not be used for the payment of expenses.

6. Temporal Limits on Funds Transfers. When joint expenses are incurred that will be paid by the federal account, any transfers from a PAC's non-federal account to its federal account must occur not more than 10 days before or 60 days after the payment of any vendors.

7. Allocation Methods. Three alternative sets of rules apply to the allocation of expenses between a federal and non-federal account maintained by a PAC. Administrative expenses (not directly attributed to any particular candidate), expenses associated with generic voter drives (supporting a particular party or issue without mentioning any particular federal or non-federal candidates), and generic public communication expenses (that refer to a political party, but not to any particular federal or non-federal candidates) must be shared equally between the federal and non-federal account (unless a justification can be provided for an alternative allocation method). Voter drives and public

communications that refer to both federal and non-federal candidates must be allocated based on the ratio of time or space devoted to candidates to federal versus non-federal elections. For example, phone banks must allocate costs based on the number of questions that relate to federal versus non-federal candidates. Direct fundraising costs that benefit both the federal and non-federal account must be allocated based on the ratio of funds received by the federal versus the non-federal account.

8. Initiation of Fundraising. If a PAC raises money for both a federal and non-federal account, prior to the initiation of fundraising the PAC must report to the FEC an estimated allocation ratio of funds received for federal purposes to total funds raised for each fundraising program or event and must give each program a unique name or code.

9. Adjustment of Allocation Ratios. Within 60 days of the completion of each fundraising event or program, a PAC allocating expenses between a federal and non-federal account must determine the actual ratio of federal funds to total funds raised and transfer funds from its federal account back to its non-federal account to the extent necessary to avoid an excessive transfer of funds to the federal account. The revised allocation ratio and the funds transfer must be reported in the next set of reports filed by the PAC with the FEC.

10. Reports. A PAC allocating expenses between its federal and non-federal accounts must disclose the information on Schedules B, H2, H3 and H4 of its FEC Form 3X filings.

II. Requirements for Pennsylvania Political Contributions

1. Registration. Any "committee, club, association or other group of persons" which receives contributions for the purpose of influencing elections in an aggregate amount of \$250 or more must file a registration statement as a "political committee" with the Pennsylvania Department of State using Form DSEB-500. A statement must be filed within 20 days after the date the committee receives such amount. A political committee not formed on behalf of or authorized by a specific candidate is known as a "political action committee." A political committee formed on behalf of or authorized by a specific candidate is known as a "candidate committee." A political committee may not use any of its funds to make contributions to candidates or other political committees until it is registered.⁹

2. Registration Information. A registration must include (1) the name, address and phone number of the political committee; (2) the name, address and phone number of the committee's treasurer; (3) the name, address and phone number of the committee's chairperson; (4) the names, addresses and relationship of other affiliated or connected organizations; (5) a list of offices of candidates the committee intends to support; (6) any ballot questions that the committee supports or opposes; (7) the bank, safety deposit boxes or other repositories used by the committee; and (8) the proposed period of operation of the committee (which may be indefinite).

3. Changes to Registration Information. Changes to a political committee's registration must be reported within 30 days of the change.

4. Committee Officers. Every political committee must designate a treasurer and a chairperson who cannot be the same person. No contributions may be received or expenditures made if there is a vacancy in either office. A political committee may also designate an assistant treasurer or vice chairperson to assume the duties and responsibilities of the treasurer or chairperson in the event of a temporary or permanent vacancy in the office.

5. Duties of Treasurer. All money received and disbursements made must be through the committee treasurer. Any person receiving any contribution on behalf of the committee must turn such contributions over to the treasurer within 10 days of its receipt. The committee treasurer is responsible for the filing of all campaign finance reports. The treasurer is also personally responsible for late filing fees in the amount of \$10 a day for the first 6 days and \$20 a day thereafter up to a maximum of \$250.

6. Required Records. A political committee must keep records of the names and addresses of each person who makes a contribution over \$10. Records must be retained by the committee for the period of three years following the date that the committee is required to file a report disclosing receipt of the contribution. All records must be retained by the treasurer for a period of three years

7. Reports. A political committee which receives contributions or makes expenditures or incurs liabilities exceeding the sum of \$250 must file cumulative annual campaign finance reports using Form DSEB-502. If a committee makes independent campaign related expenditures to support the election of a candidate, the committee must also file an independent campaign finance report using Form DSEB-505. A political committee which receives contributions or makes expenditures or incurs liabilities in an amount not exceeding the sum of \$250 shall file a sworn statement to that effect on the current version of Form DSEB-503. The reports must be submitted on the following schedule:

- A pre-election report must be filed not later than the 2nd Friday or at least 15 days prior to an election for which the committee has made expenditures to influence the election or made contributions to another political committee.
- A post-election report must be filed 30 days after an election for which the committee has incurred expenditures or made contributions, or 10 days after a special election.
- An annual report must be filed on January 31st of each year for the prior calendar year.

8. Simplified Reporting for Federally Registered PACs. Federally registered PACs must also register in Pennsylvania, but a PAC that is federally registered is only required to file cumulative campaign finance reports consisting of (1) the cover page of Form DSEB-502; (2) Schedule III of Form DSEB-502 reporting expenditures in support of Pennsylvania elections, but reporting as a single lump sum all other expenditures; and (3) the summary pages for FEC Form 3X, *i.e.*, pp. 1 through 5.

9. Prohibited Contributions. It is unlawful for corporations and unincorporated associations, except corporations organized as a political committee, to make any "contributions" or "expenditures" on behalf of any candidate or for any "political purpose whatever," except in connection with ballot questions. For purposes of these prohibitions, the term "unincorporated association" does not include a partnership or limited liability company treated as a partnership for federal tax purposes, provided that any contributions made by a partnership or LLC do not contain corporate funds.¹⁰ Each person making contributions to a political committee must do so in his or her own name and may not make anonymous contributions, cash contributions in excess \$100, or contributions using funds provided by another person.

10. Use of Corporate Funds to Sponsor a PAC. Corporate and unincorporated association funds may be used to establish and maintain political committees, provided that (1) no administrative expenses are used for activities directly involved in influencing elections; (2) no administrative expenses are used to pay debts incurred by candidates or committees; (3) no payments are made to compensate an agent for services rendered to a committee or to a candidate; (4) all contributions made to the political committee are made voluntarily; and (5) the funds of the political committee are separate and segregated from any other account of the corporation or unincorporated association.

11. Disclosure Statements. Whenever a political committee makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a candidate or a position on ballot questions through a broadcasting station, newspaper, magazine, outdoor advertising facility, direct mailing or other type of general public political advertising, a disclosure statement must accompany the communication. If authorized by the candidate, his or her authorized political committee or their agents, the communication must clearly and conspicuously state that the communication has been authorized. If not authorized by a candidate, his or her authorized political committee or their agents, the communication must clearly and conspicuously state the name of the PAC that made or financed the expenditure for the communication, and the name of any affiliated or connected organization. These requirements do not apply to bumper stickers, pins, buttons, pens and similar small items upon which the statement cannot be conveniently printed.

12. Lobbyist PAC Registration. Any lobbyist who has given a contribution or pledge regardless of amount to any candidate is subject to the same registration and reporting requirements as are political committees. These requirements are in addition to separate lobbyist registration and reporting requirements.

13. Federal Registration. A Pennsylvania political committee may not contribute to candidates in federal elections unless also registered with the Federal Election Commission.

14. Non-Bid Contractor Reports. Any business entity that has been awarded non-bid contracts by the state or any political subdivision during the preceding calendar year must file a report using Form DSEB-504 by February 15th of each year with the Secretary of Commonwealth containing an itemized list of all political contributions known to the business entity by virtue of the knowledge of each officer, director, associate, partner, limited partner, or individual owner to have been made by any officer, director, associate, partner, limited partner, individual owner, employee, or members of the immediate families, when contributions exceed \$1,000 by any such individual during the preceding calendar year.

About the Author:



Raymond P. Pepe
+1.717.231.5988,
raymond.pepe@klgates.com

Mr. Pepe is a partner in the Harrisburg office of K&L Gates and is a member of the firm's Public Policy and Law practice group. He has a broad based administrative law, litigation and transactional practice which concentrates on issues involving banking, environmental protection, health care, state and local taxation, land use planning, and real estate transactions.

About the Firm:

K&L Gates LLP is a global law firm with lawyers who practice in 35 offices located on three continents and represents leading global corporations, growth and middle-market companies, capital markets participants and entrepreneurs in every major industry group as well as public sector entities, educational institutions, philanthropic organizations and individuals. To learn more, please visit www.klgates.com.

About the Pennsylvania Policy Practice:

K&L Gates maintains a robust Pennsylvania policy practice and enjoys a long history of developing innovative and lasting alliances with our clients to solve problems arising before state government. Our substantial knowledge of Pennsylvania government enhances our ability to effectively monitor, advise, and influence government affairs/policy decisions. In combination with K&L Gates' substantial presence in its Pittsburgh and Harrisburg offices, we provide an efficient and coordinated federal lobbying team for Pennsylvania companies and organizations with federal policy priorities. We represent our Pennsylvania-based client interests in Washington, D.C. before Congress, executive branch and regulatory agencies, and the courts.

Our team is led by a former Secretary of Legislative Affairs to the Governor of Pennsylvania, who also held senior positions within the Pennsylvania Governor's Office, the Pennsylvania House of Representatives, and the Pennsylvania Department of Labor & Industry. Team members are lawyers and professionals that have served as elected and appointed legislative, executive, and judicial officials at the local, state, and federal level and also include a former Pennsylvania governor and United States Attorney General and a former major lobbyist for one of Pennsylvania's largest business associations, with significant experience in managing coalitions on broad industry issues.

Endnotes:

- 1 Forms to establish and file campaign finance reports as required by the FEC are available at <http://www.fec.gov/info/forms.shtml>.
- 2 Restrictions exist on the provision of meals, entertainment or prizes used to promote fundraising. See Paragraph I(C)(11) ("Use of Corporate Funds for Promotional Items").
- 3 See Paragraph I(B)(5) ("Contribution Limits").
- 4 See Paragraph I(C)(14) ("Handling Illegal Contributions"). Somewhat different rules apply if excessive contributions are received.
- 5 The terms "conduit" and "intermediary" are synonymous.
- 6 Individuals may contribute up to \$2,400 per election to each candidate or candidate committee (subject to inflation adjustments each odd-numbered year); up to \$34,400 per calendar year to each national party committee; up to \$10,000 per calendar year to state, district, and local party committees; up to \$5,000 per year to other political committees; and are subject to the aggregate biennial contribution limits noted above. The donor's aggregate permissible contributions to a candidate or committee consist of donations made both directly, through earmarks, or through partnership contributions allocated to an individual.
- 7 See Paragraph I(D)(5) ("Records of Receipts").
- 8 See Paragraph I(C)(6) ("Collecting Contributions for a PAC").
- 9 Forms for the registration of a PAC under Pennsylvania law and for filing campaign finance reports are available at.: <http://www.dos.state.pa.us/campaignfinance>.
- 10 Section 1633(a) of the Pennsylvania Campaign Expense Reporting Law, 25 P.S. § 3253(a), prohibits "unincorporated associations" from making political contributions and expenditures and does not define what constitutes an unincorporated association. The Pennsylvania Statutory Construction Act defines the term "association . . . when used in any statute finally enacted before Dec. 7, 1994, [as] any form of unincorporated enterprise owned by two or more persons *other than a partnership or limited partnership.*" 1 Pa. C.S. § 1991 (emphasis added). The Campaign Expense Reporting Law was finally enacted before Dec. 7, 1994, and therefore its term "unincorporated association" does not include partnerships and limited partnerships. This interpretation has been informally confirmed on multiple occasions by the Pennsylvania Election Bureau.



K&L | GATES

Anchorage Austin Beijing Berlin Boston Charlotte Chicago Dallas Dubai Fort Worth Frankfurt Harrisburg Hong Kong London
Los Angeles Miami Moscow Newark New York Orange County Palo Alto Paris Pittsburgh Portland Raleigh Research Triangle Park
San Diego San Francisco Seattle Shanghai Singapore Spokane/Coeur d'Alene Taipei Tokyo Washington, D.C.

K&L Gates includes lawyers practicing out of 35 offices located in North America, Europe, Asia and the Middle East, and represents numerous GLOBAL 500, FORTUNE 100, and FTSE 100 corporations, in addition to growth and middle market companies, entrepreneurs, capital market participants and public sector entities. For more information, visit www.klgates.com.

K&L Gates is comprised of multiple affiliated entities: a limited liability partnership with the full name K&L Gates LLP qualified in Delaware and maintaining offices throughout the United States, in Berlin and Frankfurt, Germany, in Beijing (K&L Gates LLP Beijing Representative Office), in Dubai, U.A.E., in Shanghai (K&L Gates LLP Shanghai Representative Office), in Tokyo, and in Singapore; a limited liability partnership (also named K&L Gates LLP) incorporated in England and maintaining offices in London and Paris; a Taiwan general partnership (K&L Gates) maintaining an office in Taipei; a Hong Kong general partnership (K&L Gates, Solicitors) maintaining an office in Hong Kong; and a Delaware limited liability company (K&L Gates Holdings, LLC) maintaining an office in Moscow. K&L Gates maintains appropriate registrations in the jurisdictions in which its offices are located. A list of the partners or members in each entity is available for inspection at any K&L Gates office.

This publication is for informational purposes and does not contain or convey legal advice. The information herein should not be used or relied upon in regard to any particular facts or circumstances without first consulting a lawyer.

©2010 K&L Gates LLP. All Rights Reserved.